



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

ZA/H LJ
F. #2011R01655

*271 Cadman Plaza East
Brooklyn, New York 11201*

June 25, 2015

To be Filed Under Seal

By Hand and ECF

The Honorable John Gleeson
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Lawal Babafemi
Criminal Docket No. 13-109 (JG)

Dear Judge Gleeson:

The government writes in connection with the New York Times Company's request to unseal certain redacted portions of the defendant's sentencing memorandum in this case.

[REDACTED] For the reasons set forth below and discussed on the record on June 18, 2015, the government respectfully submits that the defendant has not met his burden for keeping the currently-redacted portions of his sentencing memorandum under seal.

I. Background

The defendant pleaded guilty, in April 2014, to conspiring to provide and providing material support to the designated foreign terrorist organization al-Qaeda in the Arabian Peninsula, in violation of 18 U.S.C. § 2339B. On January 9, 2015, the defendant filed a sentencing memorandum under seal. On April 24, 2015, the government filed its sentencing memorandum under seal which included, in footnote 1 on page 1, a proposal to redact certain portions of the memorandum from the publicly-filed version. The defendant did not object to the contours of the proposed redactions, and the government publicly filed a redacted version of its sentencing letter on April 30, 2015.

This image is a high-contrast, black-and-white scan of a physical object. The object is mostly black, with several bright, irregular white areas that appear to be edges or holes. It has a rough, textured appearance, possibly representing a piece of debris or a damaged item.

The image consists of two distinct vertical regions. The left side is a dark, almost black, surface with a fine, irregular texture. The right side is a bright, white surface with a similar, though slightly more pronounced, texture. There is a sharp, vertical boundary between the two regions.

On May 20, 2015, the New York Times Company (the “Times”) filed a letter seeking the unsealing of the defendant’s January 9, 2015 sentencing submission. [REDACTED]

The Times was provided with a copy of defendant's redacted sentencing memorandum but not with a copy of defendant's June 5, 2015 letter, which was filed under

seal for the reasons stated therein. The Times objected to the proposed redactions in a letter dated June 12, 2015. The newspaper argued that the fact that the redactions pertained to a request for a “substantial downward departure” in a serious terrorism case uniquely and forcefully implicated “the policy reasons that undergird the U.S. court system’s long history of openness.” Times Letter at 3 (June 12, 2015).

II. Discussion

The standard by which an application to seal in this context should be considered is clear and undisputed: the public and the press have a qualified First Amendment right of access to sentencing proceedings and to documents filed in connection with sentencing proceedings. United States v. Alcantara, 396 F.3d 189, 197 (2d Cir. 2005). Therefore, in order to close sentencing proceedings or seal documents filed in connection therewith, the Court must make “specific, on the record findings . . . demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” Id. at 199 (internal quotation marks and citations omitted). The Second Circuit has traditionally followed the four-step test articulated in United States v. Doe in deciding whether or not the standard for sealing or closure has been met:

First, the district court must determine, in specific findings made on the record, if there is a substantial probability of prejudice to a compelling interest of the defendant, government, or third party. . . . Second, if a substantial probability of prejudice is found, the district court must consider whether reasonable alternatives to closure cannot adequately protect the compelling interest that would be prejudiced by public access. Third, if such alternatives are found wanting, the district court should determine whether, under the circumstances of the case, the prejudice to a compelling interest overrides the qualified First Amendment right of access. Fourth, if the court finds that closure is warranted, it should devise a closure order that, while not necessarily the least restrictive means available to protect the endangered interest, is narrowly tailored to that purpose.

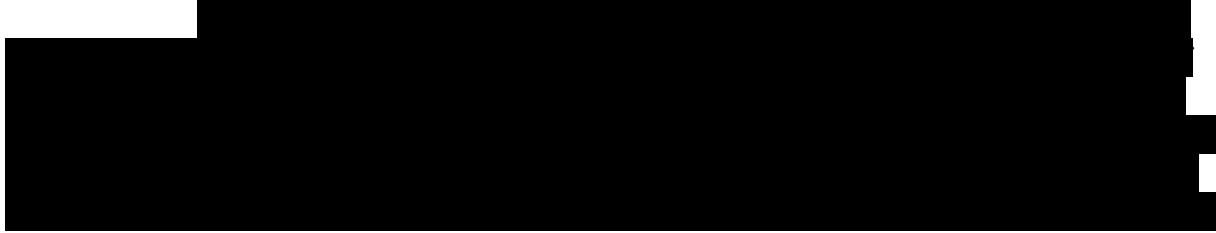
63 F.3d 121, 128 (2d Cir. 1995) (internal citations and quotation marks omitted).

The party seeking sealing bears the burden of “establishing a substantial probability of danger” or prejudice to a compelling interest. Id. at 130.

This case fails at the first prong of Doe because the defendant has not met his burden of establishing a “substantial probability of prejudice to a compelling interest.” [REDACTED]

[REDACTED] While the interest identified by the defendant is

clearly compelling, the likelihood that it will be prejudiced by has not been demonstrated by the record.



10. The following is a list of statements concerning the use of the Internet by teenagers. Please indicate whether you agree or disagree with each statement.

The image consists of two distinct regions. The left side is a dark, almost black, surface with a fine, irregular texture. The right side is a bright, white area featuring a series of thick, horizontal steps or ledges. These steps are composed of dark, rectangular blocks that are slightly offset from each other, creating a staircase-like effect. The overall contrast between the two sides is very high.

the first time in the history of the world, the people of the United States have been called upon to determine whether they will submit to the law of force, or the law of the Constitution. We consider the question to be, whether the Southern Slaveholding States have a right to secede from the Federal Union; and, if so, whether the Federal Government has a right to suppress them by force. The former question is the more important, because it is the only one that can be decided by the people themselves. The latter question is of less importance, because it can only be decided by the Federal Government, and the people have no voice in it.

the first time in the history of the world, the people of the United States have been called upon to decide whether they will submit to the law of force, or the law of the Constitution. We shall not shrink from that decision. We shall meet the enemy at the threshold, and call upon him to退一步，再退一步。他若不从，我军即以武力解决之。他若从，我军即以和平解决之。他若不从，我军即以武力解决之。他若从，我军即以和平解决之。

The image consists of two distinct horizontal bands. The upper band is a thick, solid black rectangle that spans most of the width of the frame. The lower band is a thinner, solid black rectangle located directly below the first. Both bands are set against a plain white background. There is no text or other graphical elements present.

Mindful of the fact that the Court's power to limit the qualified First Amendment right of access of the public and the press "is one to be very seldom exercised, and even then only with the greatest caution, under urgent circumstances, and for very clear and apparent reasons," the government respectfully submits that there is an insufficient basis in the record for such a limitation in this case. United States v. Cojab, 996 F.2d 1404, 1405 (2d Cir. 1993).

III. Conclusion

Because the defendant has not met his burden of demonstrating a “substantial probability of prejudice to a compelling interest,” the government respectfully submits that Court grant the Times’ application for unsealing. In light of the fact that the issues discussed herein currently remain under seal, however, the government respectfully requests that this letter be sealed. The government will file a redacted version, excising the discussion of topics currently under seal, on the public docket.

Respectfully submitted,

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